Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
Amendment of the Commission's	)	WT Docket No. 97-82
Rules Regarding Installment Payment	)	
Financing For Personal Communications	)	
Services (PCS) Licenses	)	
	)	
	)	
C Block PCS Spectrum Auction	)	DA 98-2318
Scheduled For March 23, 1999	)	
Procedural Issues	)	

COMMENTS OF OMNIPOINT CORPORATION

Omnipoint Corporation ("Omnipoint"), by its attorneys, files these comments in response to the Public Notice[1] requesting comment on several procedural issues for Auction 22, the re-auction of returned PCS Block C spectrum, as well as 14 Block D, E, and F licenses. Omnipoint and its subsidiaries have been an active participant in the Commission's PCS Entrepreneur's Band, and currently hold four (4) Block C licenses and fifty (50) Block F licenses. Omnipoint was the fourth highest bidder in the initial Block C auction. Finally, Omnipoint is one of the few Block C licensees to launch Entrepreneur Band systems; Omnipoint's commercial launch on its Block C Philadelphia, PA license is the first Entrepreneur Band operating system in a top-10 U.S. market. Omnipoint believes that the Bureau must revise the minimum opening bid schedule to promote

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[1] Public Notice, DA 98-2318, Report No. AUC-98-23-A (Auction No. 22) (rel. Nov. 12, 1998) ("Public Notice"), *revised*, Public Notice, DA 98-2337, Report No. AUC-98-22-B (Auction No. 22) (rel. Nov. 19, 1998).

auction competition, and should design its procedural rules to ensure fairness and notice of auction changes to all auction participants.

I. Minimum Opening Bids Should Be Reduced to $.02/MHz/POP.

In Omnipoint's view, the minimum opening bid ("MOB") suggested in the Fourth R&O[2] – i.e., 10% of the final auction price from the initial Block C auction – could seriously impede the efficient, market-based functioning of the auction. The role of a MOB – "to . . . ensure that licenses are not dramatically undervalued"[3] – should be satisfied by market forces and not by arbitrarily resorting to a schedule of high minimum opening bids. The danger of relatively high MOB for the Block C re-auction is apparent: markets will likely go unbid where those same licenses would have been allocated efficiently in an auction with a less restrictive MOB schedule. As discussed below, Omnipoint urges the Commission to adopt a MOB schedule of $.02/MHz/POP for the Block C re-auction.

A high MOB that interferes with a market allocation of licenses is especially inappropriate in the context of broadband PCS, where the Commission has emphasized the importance of auctions as a means of efficient license allocation across multiple BTA regions.[4] While a market-based auction may result in prices for licenses in outlying markets to fall below average auction prices, licensees acquiring such markets often do so

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2 *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, Fourth Report and Order, FCC 98-176 (rel. Aug. 19, 1998) ("Fourth R&O").

3 *Auction of Local Multipoint Distribution Service*, Order, 13 FCC Rcd. 782, ¶ 10 (WTB, 1998) ("LMDS Order").

4 *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd. 2348, 2361 (1994); Fifth Report and Order, 9 FCC Rcd. 5532, ¶ 36 (1994).

as part of a multi-license regional strategy for system deployment. Encouraging such auction strategies fully compensates the public because the strategy also results in intensive competition for the "core" markets. It is especially critical that the core markets not be set artificially high or else they may go unbid, which would, in turn, render the peripheral markets valueless. In sum, higher MOB prices would significantly interfere with an efficient market outcome.

In addition, the proposed MOB schedule of 10% of the price of the final, winning bids in the prior Block C auction is inconsistent with the Commission's prior decisions on MOB schedules, which evaluate "relevant factors that could reasonably have an impact on valuation of the spectrum being auctioned."[5] For the Block C re-auction, several factors on the expected value of Block C re-auctioned licenses indicate that the Commission should place a relatively moderate, and not a relatively high, MOB schedule. *First*, the Block C licensees obtaining spectrum through the re-auction will be the last entrant into highly competitive wireless markets; cellular incumbents have had over a decade of duopoly control, and five PCS licensees (as well as SMR licensees) have already been granted licenses to operate in every market. In many markets, there are already several operational wireless competitors. *Second*, final winning bids of the initial Block C auctions were based on the 10-year installment payment plan, with interest only for the first six years. In this auction, however, nominal license prices are likely to be significantly reduced because no government financing will be offered. *Third*, the valuation of the Block C re-auction spectrum continues to be uncertain, and subject to discounting, due to the GWI bankruptcy decisions and the pending NextWave bankruptcy case, which significantly undermine valuations of the re-auctioned Block C spectrum.

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5 *Implementation of Section 309(j) of the Communications Act*, First Report and Order, MM Dkt. 97-234, 13 Communications Reg. (P&F) 279, ¶ 134 (1998)

Fourth, the Block C re-auction licensee does not obtain a "free and clear" right to use of the spectrum; rather, the rights of the Block C licensee are subject to the prior rights of microwave incumbents, in accordance with the process of frequency coordination with such incumbents. *Finally*, the Block C re-auction is reserved for "small business" participants in the initial auction and other "small businesses." A relatively high MOB schedule, however, could result in a market barrier to entry for small businesses. Thus, Omnipoint believes that the mitigating factors surrounding the Block C re-auction would counsel for a relatively conservative MOB schedule.

Further, Omnipoint notes that the proposed 10% MOB schedule is *significantly* higher than MOB schedules set in all prior FCC auctions. The prior MOB schedules set for prior auctions is summarized, as follows:

SMR Auction	$.02/MHz/POP;[6]
LMDS Auction	$0.0004/MHz/POP to $0.002/MHz/POP;[7]
220 MHz Auction	$.0125/MHz/POP to $0.0175/MHz/POP;[8]
LMS Auction	$.0008/MHz/POP.[9]

As explained in the preceding paragraph, an analysis of the "relevant factors" surrounding the Block C re-auction would indicate that the MOB schedule should be set similar to prior auctions. As the Bureau explained in establishing a "ceiling" of $.02/MHz/POP for the SMR auction: "In arriving at our decision here to set minimum opening bids equal to

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6 SMR Order.

7 LMDS Order, ¶ 9 (LMDS MOB schedule varies depending on size of market).

8 *Auction of Phase II 220 MHz Service Licenses – Minimum Opening Bids*, Public Notice, DA 98-1010, 1998 WL 274682 (F.C.C.) (May 29, 1998).

9 *Auction of Location and Monitoring Service – Minimum Opening Bids*, Public Notice, DA 98-1879, 1998 WL 651109 (F.C.C.) (Sept. 23, 1998).

the amounts of upfront payments established for this auction, *we find that establishing minimum opening bids in excess of these amounts may threaten the goals of wide and robust bidder participation."*[10] However, if the 10% MOB schedule were implemented, Block C re-auction participants would face MOBs for 150 Block C licenses that are in excess of $.06/MHz/POP, that exceed final bid prices (on a $/MHz/POP basis) on more than 19% of the licenses in the Block D,E, and F auction, and that are several multiples of the MOBs used in all prior auctions. For example, a calculation of the 10% MOB schedule on a $/MHz/POP basis for several Block C re-auction yields the following anomalous MOBs:

Market No.	Market Name	Proposed Minimum Opening Bid	Proposed Min. Opening Bid/Pop	Proposed Min. Opening Bid/MHz/Pop
B347	Phoenix, AZ	$21,380.775.00	$8.89	$0.30
B222	Kahului, HI	$775,200.00	$7.71	$0.26
B491	US Virgin Islands	$779,775.00	$7.64	$0.25
B101	Dallas, TX	$29,102,325.00	$6.72	$0.22
B245	Las Vegas, NV	$2,855,929.00	$3.33	$0.22
B192	Honolulu, HI	$5,359,425.00	$6.41	$0.21
B372	Reno, NV	$2,780,258.00	$6.33	$0.21
B399	Salt Lake City, UT	$8,229,383.00	$6.29	$0.21
B157	Fresno, CA	$4,702,658.00	$6.22	$0.21

These high MOB prices for the Block C re-auction could significantly diminish the efficient allocation of licenses.

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10 *Auction of 800 MHz Specialized Mobile Radio Service Licenses*, Order, DA 97-2147, at ¶ 13 (WTB, rel. Oct. 6, 1997) ("SMR Order").

To avoid such a result, Omnipoint proposes that the MOB for each Block C re-auction license not exceed $.02/MHz/POP. This reduced, uniform MOB schedule would have a number of benefits, including: keeping license prices sufficiently competitive for both regional and market-specific auction competitors; employing the same MOB of $.02/MHz/POP that was used successfully in the SMR auction; simplifying the auction process for all participants; keeping the MOB for the Block C re-auction within the reasonable range of MOB schedules adopted in previous auctions. Finally, this modified approach is consistent with the Commission's MOB goals of obtaining a reasonable return to the public for the Block C spectrum, as it yields significant dollar amounts for the opening bid on each license at auction.

II. Re-Auction Should Be A Single Simultaneous, Multi-Round Auction

Omnipoint supports the Commission's decision for a single, consolidated auction of all C Block licenses resulting from the licensee elections made pursuant to the Second Report and Order (i.e., amnesty, disaggregation, or prepay options) and from prior Block C defaults. A single auction is the most expeditious way to re-allocate the spectrum and licenses to companies that will put it to its most valuable commercial use; further, simultaneity is essential to the fair allocation of licenses.

The evidence is overwhelming that the multiple-round, simultaneous auction is the best auction format for allocation of interdependent assets such as the Block C licenses. It is an auction methodology that is familiar to all bidders from the initial Block C auction, as well as small businesses that participated in the Block D,E, or F auction or other related FCC spectrum auctions. Therefore, such an auction methodology allows small businesses to avoid or minimize the internal time and resources they need to devote to preparation for the auction event. In addition, the Commission has already correctly found on numerous occasions that the simultaneous, multiple-round auction is the most efficient auction methodology.

III. A "Smoothing" Technique That Is Based on The Number of Bids For a Given License in a Prior Round(s) Should Not Be Used For The Block C Re-Auction.

The Public Notice (at 8) proposes to "use a smoothing methodology to calculate bid increments" similar to that used in the LMDS and 220 MHz auctions. Omnipoint opposes the adoption of the proposed "smoothing" technique, which varies bid increments based on the number of bids for a given license in prior round(s). This technique itself creates auction anomalies because the smoothing algorithm for setting minimum bid increments by license creates artificial disparities in minimum acceptable bids from one round to the next for comparably priced licenses, which otherwise could have served as substitutes or valid alternatives for bidders. This distortion of the auction process can manifest itself as a bidder moves temporarily from more highly contested licenses to less contested licenses, in order to allow several rounds to pass and the minimum acceptable bid on contested license to fall. The movement to less contested licenses, caused by this "smoothing" technique, displaces other bidders and destabilizes an orderly approach to an auction equilibrium. This displacement can occur late in the auction, and its effects can be arbitrary as bidders react to the differences in minimum acceptable bids for comparable licenses even though there is equivalence in standing high bid prices.

Therefore, Omnipoint believes that the Commission and all auction participants would be well served by simplifying the proposed minimum acceptable bid approach. Based on its experience in three prior FCC auctions, Omnipoint believes that the Commission should return to a more simple method of calculating the minimum bid increment that avoids serious anomalies. Omnipoint suggests that the Commission adopt the following formula for the Block C re-auction: the minimum bid increment for a given license is the lesser of (a) 5% of the standing high bid, or (b) $0.0033/MHz/POP.

IV. If A "Smoothing" Technique Is Used, Then Any Changes To Adjustment Values of The Minimum Acceptable Bid Should Be Gradual, With Reasonable Advanced Notice to All Auction Participants

In Omnipoint's view, the Commission should employ a bid increment methodology in the Block C re-auction that allows the participants a fair opportunity to maximize alternative auction strategies and that provides sufficient notice of changes to the minimum acceptable bid approach. The Public Notice (at 8) proposes to employ a "smoothing" technique to calculate bid increments with the maximum adjustment of 20% and a minimum adjustment of 10% of the license value. Indeed, a 20% adjustment value would lead to a doubling of license prices in just 5 rounds. Such precipitous increases in minimum bids would not optimize the process of license allocation, or recover value for the public, because bidders are prematurely foreclosed from engaging in alternative bidding strategies based on license values derived from the auction process itself. Further, significant "leaps" in auction prices due to a 20% adjustment prevents optimal license allocation to a given party that may value the license more than the high bidder, but not as much as a 20% price increase.

Omnipoint urges the Bureau to reduce the proposed adjustment values to set a maximum adjustment of 10% and a minimum adjustment of 5% of the license value. A 5% to 10% range would allow the auction to progress in a reasonable fashion, and would promote more efficient bidding behavior.

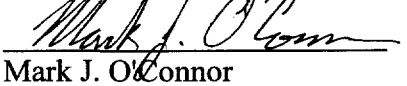
In addition, Omnipoint believes that the adjustment value of the minimum acceptable bid should be changed only after prior notice of at least one "auction day" to all auction participants. Changes in the minimum acceptable bid could significantly affect parties' auction strategies, and will certainly expend limited auction resources and time of "small business" auction participants during this auction. Reasonable prior notice, however, provides parties with at least a short opportunity to adjust their strategies and their resources and time management to handle auction changes in a rational way. Further, as the Public Notice (at 8) suggests, the cost of prior notice is nominal --

Commission can conveniently provide auction participants with prior notice through the Automated Auction System.

Moreover, Omnipoint believes that changes to the adjustment values on minimum acceptable bids should be done in a manner that is gradual and rational. Like prior notice, gradual changes to the adjustment value minimize the uncertainties of the auction process itself, as well as the time and effort spent on such uncertainties. Gradual changes, therefore, allow bidders to focus on their auction participation. Moreover, gradual changes allow bidders a greater degree of flexibility to pursue alternative auction strategies or to "fine tune" their license portfolios in a rational manner. The possibility of significant shifts in the adjustment value of minimum bid increment at any time, however, would tend to encourage overly defensive and less rational bidding behavior. Omnipoint strongly questions what exactly the Commission intends with the suggestion that the Bureau should retain the discretion to raise the adjustment values at the end of the auction "to enable bids to reach their final values more quickly." Public Notice at 8. Omnipoint strongly urges a further discussion on exactly how such discretion would be used since, based on prior experience, sudden changes in the course of the auction have had severe effects. Sudden regulatory changes in the auction process have been especially "gamed" at the very end of an auction, with unintended consequences.

Respectfully submitted,

OMNIPOINT CORPORATION

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Omnipoint Corporation were sent by hand delivery this 30th day of November, 1998 to the following:

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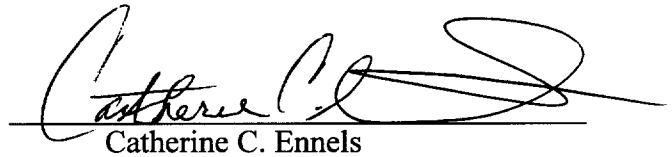

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